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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,019	11/30/2001	Andrew Joseph Keogh	063511/9043	4717

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/889,019

Applicant(s)

KEOGH, ANDREW JOSEPH

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-38, 40-51 and 53-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-38, 40-51 and 58-60 is/are rejected.
- 7) ☒ Claim(s) 55-57 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 49-52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed Nov. 12, 2004, applicant amends the claims to recite a temperature range of " greater than 100 to 150 degree C ". This temperature range is not supported by the original disclosure and claims. The specification discloses 70-150 degree C. The examples do not set forth the range as now claimed. Even when considering the temperature outside of the extruder as the first temperature, there is no support for the range claimed. Example 1 discloses a temperature of about 120 degree C and example 2 discloses about 105 degree C. The range of greater than 100-150 degree C includes temperatures that is not disclosed.

Claims 58-60 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 5/31/05, applicant submits new claims 58-60. The temperature range claimed is not disclosed. The claims have the same problem as cited above for claims 49-52.

Claims 23-29,31-38,40-51, 53-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al.

Bisson et al disclose a process of making puffed product. The process comprises the steps of forming mixture of materials and passing the mixture through an extruder having temperature in the range of 30-70 degree C in the barrel, 40-100 degreeC in the nozzle and under pressure. The paste-like material issuing from the extruder is passed into an enclosure where a subatmospheric pressure prevails. The enclosure has a pressure of from 2-71kPa(.02-.7atms). The paste-like material expands in the enclosure by evaporation of the water. The strand issuing from the extruder nozzle may be cut up into rods, pellets or chip. Alternative, the extruded strand may be discharged into a space where atmospheric pressure prevails. The temperature in the extruder imparts to the materials the plasticity required for passing smoothly through the bores in the nozzle. The product obtained can be seasoned, sweetened, flavoured or coloured. The puffed product may be impregnated with a fat, syrup, liquor or an alcohol. The mixture used to form the food product contains water. (see col. 2-3)

Bisson et al do not disclose using a belt conveyor, the foodstuff is a confectionery, forming the composition into balls, the second temperature being lower than the first temperature and temperature greater than 100-150 degreeC.

It would have been obvious to use a belt conveyor to transport the composition to the enclosure where expansion takes place. The use of the conveyor belt enhances the speed of the process. It would also have been obvious to make a confectionery product because Bisson et al disclose various compositions can be made and materials such as

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syrup, sweetening agent can be added. The addition of sugar will make the product to be a confectionery product. It would also have been obvious to make the second temperature to be lower than the first temperature because the composition has already been plasticized in the extruder; thus, the composition does not need to be heated. It is obvious the product is cooled after it exists the extruder. It would have been obvious to make the temperature around ambient to quicken the cooling of the product. As to the temperature of greater than 100-150 degree C, greater than 100 can include 100.01 which would not differentiate from the 100 degree disclosed by Bisson because temperature can vary slightly and not be detected or produce a different result.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al in view of Forkner.

The teaching of Bisson is described above. Bisson does not disclose adding a chemical expanding agent.

Forkner discloses expanded confections. He teaches to add chemical expanding agent to aid in the expansion. (See col. 6 lines 45-50)

It would have been obvious to add a chemical expanding agent as taught by Forkner in the composition of Bisson to aid in the expansion of the food product.

Claims 55-60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 55-60 are free of prior art because Bisson et al do not disclose the first temperature is at a region outside and after an extruder. Also, there is no suggestion to have the temperature in the range cited in claims 58-60.

In the response filed 5/31/05, applicant argues the extrusion temperature of Bisson is not equivalent to the claimed first temperature and the product is removed from the sub-atmospheric region to a region at atmospheric pressure where P_1 is less than P_2 . This argument is not persuasive. There is nothing in the rejected claims that define where the first temperature is. Thus, even though the first temperature in the Bisson et al process takes place in an extruder, it is still the first temperature and it is equivalent to the claimed temperature. In the Bisson et al process, the first temperature is conducted to heat the material and should be high enough to impart to the material the plasticity required. As the material passes through the nozzle of the extruder, the material exists the extruder and it is no longer heated. As this happens, it is obvious the temperature outside the extruder is lower than the temperature that is inside the extruder. As to the pressure, the material exist the extruder and the exist pressure at the nozzle may be from 9.8 to 15.7 Mpa. When the material exists the extruder, it enters the surrounding and it is at atmospheric pressure. Bisson et al teach puffing of the material in an enclosure where a subatmospheric pressure prevails. Thus, there is a P_1 that is greater than P_2 . The claims do not exclude the pressure in the extruder as long as there is a P_1 that is greater than P_2 . Applicant further argues flakes do not so much expand as mush as they soften when exposed to water. While the flakes might get soften, they also inherently expand because of the absorption of water. The claims

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do not define the degree of expansion. Expand is defined by the Webster's dictionary as "to increase the volume, size or scope". The absorption of water inherently cause the flakes to increase in size. Applicant makes the same argument with respect to independent claims 36, 48 and dependent claims 37-38, 40-47. The argument is not persuasive for the reason set forth above. With respect to the temperature range of claims 49-51, applicant argues Bisson does not teach, suggest or even mention temperatures greater than 100 degreeC. Greater than 100 degree C can be 100.01 degree C which does not define over Bisson teaching of 100 degree C because temperature can vary very slightly and does not produce any recognizable effect. The claims do not define where the first temperature takes place. With respect to claim 53, applicant argues the Bisson-s paste like amterial is not puffed until after extrusion. While the Bisson product is further puffed after extrusion, initial expansion also takes place in the extruder because Bisson et al disclose the temperature should be high enough to impart the material the plasticity required for passing through the nozzle. The initial expansion takes place in an extruder which meets the limitation of claim 54.

The 112 first paragraph rejection is maintained for the reason set forth in the rejection.

Applicant's arguments filed 5/31/05 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 12, 2005


LIEN TRAN
PRIMARY EXAMINER
